



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 5, 1994

Ms. Alesia L. Sanchez
Legal Assistant
Legal Services, 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR94-002

Dear Ms. Sanchez:

Your predecessor at the Department of Insurance asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (formerly V.T.C.S. article 6252-17a).¹ The request was assigned ID# 21113.

The Texas Department of Insurance received an open records request asking to review the department's file regarding a complaint about Mutual of America Life Insurance Company. In his initial letter to us, your predecessor argued that the requested information is excepted from disclosure by section 552.103 of the Government Code. He indicated that the requested information relates to an ongoing investigation of Mutual of America for alleged violations of the state insurance laws and that the department anticipates the investigation will culminate in an administrative contested case with Mutual of America as a party. In your predecessor's second letter to us, he submitted three documents for our review and stated that the documents "will demonstrate that there is an agency ongoing investigation in" this matter.

¹We note that the Seventy-Third Legislature codified the Open Records Act as chapter 552 of the Government Code and repealed article 6252-17a, V.T.C.S. See Acts 1993, 73d Leg., ch. 268, §§ 1, 46. The codification of the Open Records Act in the Government Code is a nonsubstantive codification. *Id.* § 47.

Section 552.103 excepts from required public disclosure information "relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party." To secure the protection of section 552.103, a governmental body must demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated and that the requested information relates to that judicial or quasi-judicial proceeding. Open Records Decision No. 555 (1990) at 2. A contested case before an administrative agency subject to the Administrative Procedure and Texas Register Act, V.T.C.S. article 6252-13a, is a quasi-judicial proceeding for the purposes of section 552.103. Open Records Decision No. 588 (1991). Whether the requested information relates to the litigation must be determined on a case-by-case basis. See Open Records Decision No. 551 (1990) at 5. However, information cannot be withheld under section 552.103 after it has been released to the party in litigation against the governmental body. Open Records Decision No. 525 (1989) at 4.

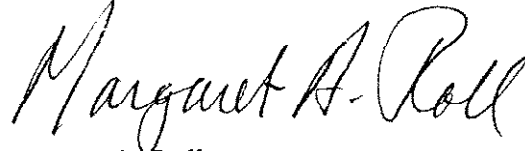
Even assuming that litigation is reasonably anticipated, we may not generally review one set of documents and conclude that another set of documents is excepted from disclosure by section 552.103. To demonstrate that requested information relates to the litigation, you must submit all the requested records to us for review.² We must review each record you claim is excepted by section 552.103 to determine whether it relates to the litigation. Therefore, you may not withhold under section 552.103 any requested documents that you have not submitted to us for review.

Furthermore, your office has not met its burden of establishing that the three documents that were submitted for review are excepted from required public disclosure by section 552.103. Nothing in either letter indicates that your office wishes to withhold the three documents submitted for review. The second letter merely states that the documents are submitted to demonstrate that litigation is pending. In addition, section 552.103 is clearly inapplicable to two of the documents submitted for review. One of these documents is a letter from Mutual of America and the other document is a letter to Mutual of America. Thus, both documents have clearly been released to Mutual of America. Finally, the third document is a letter from the Department of Insurance to the requestor in this case and does not reveal anything that Mutual of America does not already know. Although it does reveal who complained about Mutual of America, the department has already provided Mutual of America with this information. Because neither your office nor the facts of this case have clearly indicated which documents your office wishes to protect under section 552.103 and why, we conclude that section 552.103 does not permit you to withhold the documents you submitted for review.

²If the records are voluminous and repetitive, you may submit representative samples for our review. In this case, however, your predecessor did not indicate that the other records requested contain information that is the same or similar to the information in the records he did submit for review.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in black ink that reads "Margaret A. Roll". The signature is written in a cursive style with a large, stylized "M" and "R".

Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/rho

Ref.: ID# 21113, ID# 21241
ID# 21277, ID# 21391
ID# 21393, ID# 21799
ID# 21906

cc: Mr. Randall Chapman
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